

### REMARKS

Claims 1-10, 14-15, and 17-23 are pending in the present application. Claims 7, 8 and 10 have been amended, claims 1-6, 14, 15 and 17-23 have been canceled, and claims 24-33 have been added, leaving claims 7-10 and 24-33 pending upon entry of the present amendment.

Support for the amendment to the specification can be found in claims 8 and 9 as originally filed and in the specification on page 28, lines 10-12.

Support for the amendment to claim 7 can be found in claims 7 and 1 as filed. Claim 7 has merely been written in independent form by incorporating the limitations of claim 1.

Claims 8 and 10 have been amended merely to change their dependency and for consistency with claim 7. Support for the amendments can be found in claims 1, 7, 8 and 10 as originally filed.

No new matter has been added by these amendments. Reconsideration is requested in view of the foregoing amendments and the following remarks.

#### Restriction

Applicant acknowledges that the restriction requirement has been made final. Claims 1-6, 14, 15, and 17-23 have accordingly been canceled.

#### Claim Rejections Under 35 U.S.C. § 112, first paragraph

Claim 9 stands rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement. In particular, the Examiner alleges that "hydrolytic fermentation of at least one type of cohesive animal tissue" is not adequately described in the specification. The specification has been amended to include the language of claims 8 and 9. Because claims 8 and 9 were in the application as originally filed, no new matter is added by this amendment. In addition, applicant submits that hydrolytic fermentation of animal tissue is well-known in the art of pet food palatants and no further description is required.

#### Claim Rejections Under 35 U.S.C. § 102(b)

Claim 7 stands rejected under 35 U.S.C. § 102(b), as allegedly anticipated by U.S. Patent No. 5,079,017 to Chen et al. (hereinafter "Chen"). Applicant respectfully traverses this rejection.

The present claims are directed to a palatability enhancer for an animal food comprising a reaction product of at least one triglyceride molecule and at least one donor which functions as a donor of elements selected from the group consisting of sulfur, nitrogen, and a combination of sulfur and nitrogen. The claimed palatability enhancer is a "cooked product", that is a reaction product formed between the fat/oil and the donor.

Chen is directed to a flavoring composition prepared by heating a fat or oil to a temperature of 300°C to 475°C. (Abstract) Flavor precursors such as "sulfur-containing compounds such as cysteine, cystine, methionine, thiamine, hydrogen sulphide, or sulfur-containing extract from vegetables" may be employed during heating of the fat. (col. 2, ll. 41-43) The flavoring composition can be used to impart flavors to "meats, sauces, soups, etc.". (col. 3, ll. 48-49) There is no mention in Chen of the use of the flavoring compositions in an animal food.

In making the rejection, the Examiner states "Chen et al teach a flavorant obtained by heating an oil/fat and a sulfur-containing compound". (June 6, 2004 Office Action, page 3)

The present claims are directed to a palatability enhancer for an animal food formed "in quantities sufficient to form a cooked product for use as a palatability enhancer for at least one type of animal food preparation". While Chen teaches the production of flavorants for "meats, sauces, soups, etc.", Chen does not teach flavorants suitable for animal foods. Chen is thus missing an essential element of the present claims.

To anticipate a claim, a reference must disclose each and every element of the claim. *Lewmar Marine v. Variet Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Because Chen does not teach a palatant suitable for animal foods, Chen is missing an element of the present claims and thus does not anticipate the present claims. Further, Chen does not render the present claims obvious. As is well-known in the art of palatants for animal foods, flavorants that are appealing to humans are not necessarily appealing to animals. In addition, animal foods are formed from different components than "meats, sauces, soups, etc." and thus the palatants of Chen may not be suitable for use on an animal food. Thus, the disclosure of a flavorant for human food does not render obvious the use of a palatant for animal foods.

For at least the foregoing reasons, reconsideration and withdrawal of the rejections under 35 U.S.C § 102(b) are requested.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 8-10 stand rejected under 35 U.S.C. § 103(a) as allegedly obvious over Chen in view of U.S. Patent No. 4,267,195 to Boudreau et al. (hereinafter "Boudreau") and U.S. Patent No. 6,312,746 to Paluch et al. (hereinafter "Paluch") Applicant respectfully traverses the rejection.

Boudreau is directed to dog food flavors containing "L-proline, L-cysteine, L-histidine, L-lysine, inosine 5'-triphosphate (ITP), inosine 5'-diphosphate (IDP), and adenosine 5'-triphosphate (ATP)". (Abstract) The use of these compounds in dog foods can "increase their palatability to dogs". (Abstract) The flavors can be "applied to the exterior of the fat coating" or incorporated into the dog food by "simple mixing with the other ingredients". (col. 2, ll. 42-46) There is no description of heating or in any way reacting the L-cysteine, etc.

Paluch is directed to a multi-component pet food having inner and outer components. (Abstract) The filling may comprise, for example, hydrolyzed meat protein. (col. 10, l. 61)

In making the rejection, the Examiner states "Boudreau et al disclose it is well known that cysteine (nitrogen and sulfur containing) serves to increase palatability for dogs". (June 6, 2004 Office Action, page 3)

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art; that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references; and that the proposed modification of the prior art must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

As stated above under 35 U.S.C. § 102(b) rejections, there is no disclosure in Chen of a flavorant for pet food. Boudreau does not cure the defects of Chen. Chen is directed to flavors that are produced by reaction of fat and, for example, cysteine at temperatures of 300°C to 475°C. Boudreau teaches the use of cysteine as a flavorant in pet food, not the product of cysteine and a fat heated to a temperature of 300°C to 475°C. At these temperatures, cysteine would react to produce a reaction product. Boudreau thus does not provide the motivation to use

the reaction flavors of Chen in a pet food. Further, Boudreau does not provide an expectation of success for the use of a reaction flavor such as that taught in Chen in an animal food. Boudreau only teaches the use of cysteine in pet food, and not cysteine and a fat heated to a temperature of 300°C to 475°C. Thus, the references do not provide the motivation to combine or an expectation of success for the combination.

Regarding Paluch, the Examiner states "Paluch discloses conventional pet food components". (June 6, 2004 Office Action, page 3)

Applicants further submit that Paluch does not cure the defects of Chen and Boudreau. Paluch is directed to a pet food which may comprise ingredients such as a hydrolyzed animal digest. Paluch, however, does not provide the motivation to use the reaction flavor of Chen in a pet food and further does not provide an expectation of success for such a combination.

For at least the foregoing reasons, reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a) are requested.

#### New claims

New claims 24-33 have been added to further define the invention.

Claims 24 and 25 further define the fat sources for the palatability enhancer. Support for these claims can be found in claims 2 and 3 as originally filed.

Claims 26-28 further define the donor of claim 7. None of the cited references teach or suggest reacting fat with one of these particular claimed sulfur and/or nitrogen donors. Thus, the reaction products formed by reacting a fat or oil with these claimed donors are novel compared to those in, for example, Chen. The cited references neither anticipate nor render these claims obvious. Support for these claims can be found in claims 4 and 5 as originally filed.

Claims 29-32 further define the reaction conditions. Chen teaches reaction temperatures of 300°C to 475°C, which are much higher than the claimed reaction temperatures. Because the temperatures employed in Chen are much higher than the claimed temperatures, the reaction products of Chen would be expected to be different than the reaction products formed at the presently claimed temperatures. Neither Boudreau nor Paluch teaches reaction temperatures. Thus, the reaction products forming the claimed palatability enhancer are novel over the cited art. The cited references neither anticipate nor render these claims obvious. Support for new

claims 29 and 30 can be found in the specification on page 26, lines 14-27. Support for new claims 31 and 32 can be found in the specification on page 2, line 28 to page 27, line 16.

Claim 33 specifies the second palatability enhancer ingredient as a "digest of chicken livers with hydrolytic enzymes". None of the cited references teach this specific second palatability enhancer ingredient. Support for new claim 33 can be found in the specification on page 28, lines 9-12.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance is requested.

If there are any charges with respect to this Amendment, or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

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